MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
WORKERS' COMPENSATION AGENCY
LANSING, MICHIGAN

ADEQUACY OF BENEFITS
PAID UNDER THE
WORKERS' DISABILITY COMPENSATION ACT

FIFTEENTH BIENNIAL STUDY

Report submitted by
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This report is submitted biennially in odd-numbered years by March 1 of the reporting year.[1] The report is prepared under the statutory direction of MCL 418.364, which requires that "The study shall evaluate the effects of inflation on benefits and other factors which the director considers relevant." To understand the impact of inflation on workers' compensation benefits, an explanation of those benefits is in order.

Michigan is a **"wage loss compensation"** state. This is sometimes referred to as a spendable earnings approach. The weekly benefit rate provided to an injured worker is generally calculated as 80% of the after-tax value of the average weekly wage (AWW) at the date of injury. The first step in determining the weekly benefit rate is to calculate the AWW. Although there are several alternative calculations for specific situations, typically the AWW is calculated by taking the average of the highest 39 of the previous 52 weeks of wages from all employments prior to the injury date. The value of discontinued fringe benefits is also included in cases where the weekly benefit rate is below 2/3 of the state AWW. Calculation of benefits requires analysis of tax filing status and dependency. Rates in death cases are complicated by different dependency rules.

The next step in the process is to convert the AWW to the weekly benefit rate. To facilitate this calculation, the Agency publishes online lengthy rate tables each year and provides a computer based calculation program that requires annual programming adjustment. Pursuant to MCL 418.313(2) the published tables are "conclusive for the

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[1] This report was delayed to give the new Director an opportunity to fully assess the Agency.
In making this report, the Director relied upon the counsel of several Agency staff members, including Deputy Director Jack Nolish, Division Manager Mark Long, and Vocational Rehabilitation Consultant David Campbell. The conclusions in this report, however, are the Director's alone.

purpose of converting an average weekly wage into 80% of the after-tax average weekly wage."

An injured worker is also entitled to **lifetime medical care** for all work related injuries. Medical care is provided under the Act without regard to wage loss. The medical care must be reasonable, necessary, related to the injury, and is subject to the Health Care Services Rules cost containment provisions. The rate of payment, related to the rates paid by Medicare, is reviewed annually by our Health Care Services Advisory Committee and adjusted taking into account numerous economic factors, including cost of living and inflation.

Lastly, the Act provides for **vocational rehabilitation**. Injured employees are entitled to 52 weeks of services aimed at returning them to work, with the possibility of an additional 52 weeks upon order of the Director. Employees are eligible for services if they are currently receiving workers' compensation benefits, and have a work-related injury or illness which prevents them from returning to a job at which they have previous training and experience. If an injured employee returns to a job that pays less than what he/she was earning at the time of injury, the employee is entitled to partial compensation payments. Typically, all costs associated with rehabilitation services are the responsibility of the insurance carrier, including transportation reimbursement, assistive devices, and costs related to retraining.

Inflation impacts benefits over time and in the annual calculation of the weekly benefit rate. The United States Department of Labor, Bureau of Labor Statistics defines inflation as “the overall general upward price movement of goods and services in an economy.” While there are a few exceptions[2], generally speaking all workers’ compensation benefits are fixed as of the date of injury. Thus, as the result of common inflationary pressures, the unadjusted purchasing power of the weekly benefit rate for claimants who are receiving workers’ compensation benefits would be reduced over time.

Michigan addresses the impact of inflation, however, through the annual calculation of the weekly benefit rate. The Workers’ Disability Compensation Act at MCL 418.313(1) states the following:

> As used in this act, “after-tax average weekly wage” means average weekly wage as defined in section 371 reduced by the prorated weekly amount which would have been paid under the federal insurance contributions act, 26 U.S.C. 3101 to 3126, state income tax and federal income tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. Effective January 1, 1982, and each January 1 thereafter, the applicable federal and state laws in effect on the preceding July 1 shall be used in determining the after-tax weekly wage.

[2] While outside the scope of this report, see MCL 418.353, changes in dependency, 418.354 coordination of benefits, 418.356 two years of continuous disability, 418.357 age 65 reductions, 418.358 unemployment offset, 418.361 total and permanent disability.

As a result of the 1994 Court of Appeals ruling in *Radecki v. Director, Michigan Workers' Compensation Agency*, 208 Mich. App. 19, the federal income tax code that was in place on March 31, 1982 is used to calculate the weekly benefit rates. The internal revenue code at that time was written so as to be indexed to the Consumer Price Index (CPI).

The CPI is the primary measure of inflation. The indexing of the tax code to inflation means that when benefit rates are calculated on an annual basis, the rate for a given AWW for each benefit year will keep pace with inflation. The annual calculation of the weekly benefit rate is also impacted by the state and FICA/Medicare tax structure and, as such, rates for a given AWW may fluctuate from one year to the next based on tax policies.[3]

Given that annual average inflation in both the Detroit – Ann Arbor – Flint market and the national CPI have been no higher than .8% since 2009, and since the formula to calculate weekly benefit rates is based upon the CPI, the effects of inflation on benefits over the last biennium have been minimal.

The statute requiring this biennial report also asks the Director to comment upon "other factors which the director considers relevant." Previous Directors have used this language as a basis to provide thoughtful commentary on benefits and the workers' compensation system in general.

[3] The state's AWW in 2008 was $820.04, in 2009 - $834.79, 2010 - $828.73, and 2011 - $823.35.

I think it is time to discuss whether the legislature truly needs this report in the first place. The goal of the legislation requiring the report is apparently to determine whether workers' compensation benefits are keeping up with inflationary pressures. As discussed above, the published weekly benefit rates are calculated using the inflation rate. If inflation is increasing, that increase will have a tendency to increase the benefit rates.[4] If inflation is stable, then the rates will tend to be stable. Since the inflation rate is a factor in calculating the weekly benefit rate, inflation's impact over time on the workers' compensation benefits should be consistent. Similarly, the rate of payment for lifetime medical care is adjusted based on inflationary impacts. As such, the conclusion of this report should always be that the Michigan benefit structure has appropriately accounted for inflationary dynamics.

Given the relatively low average annual inflation of the last biennium, and in light of the stability in the benefit rates over that same period, workers' compensation benefits over the last two years have kept pace with inflationary pressures. Given that the annually calculated benefit rates are calculated using inflation, this is a predictable result.

Respectfully Submitted,

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[4] Again, as stated above, the benefit calculation also takes into account insurance and tax policy; if a change in the state or federal tax code tends to benefit potential workers' compensation claimants, the benefit will likely be positively impacted.